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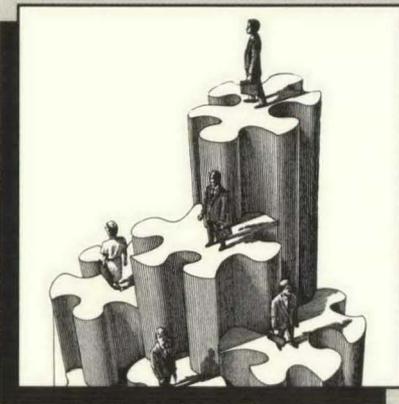
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***Law Enforcement Bulletin***

***Police Sniper Training***



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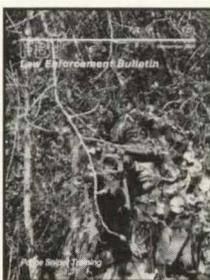
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**William S. Sessions, Director**

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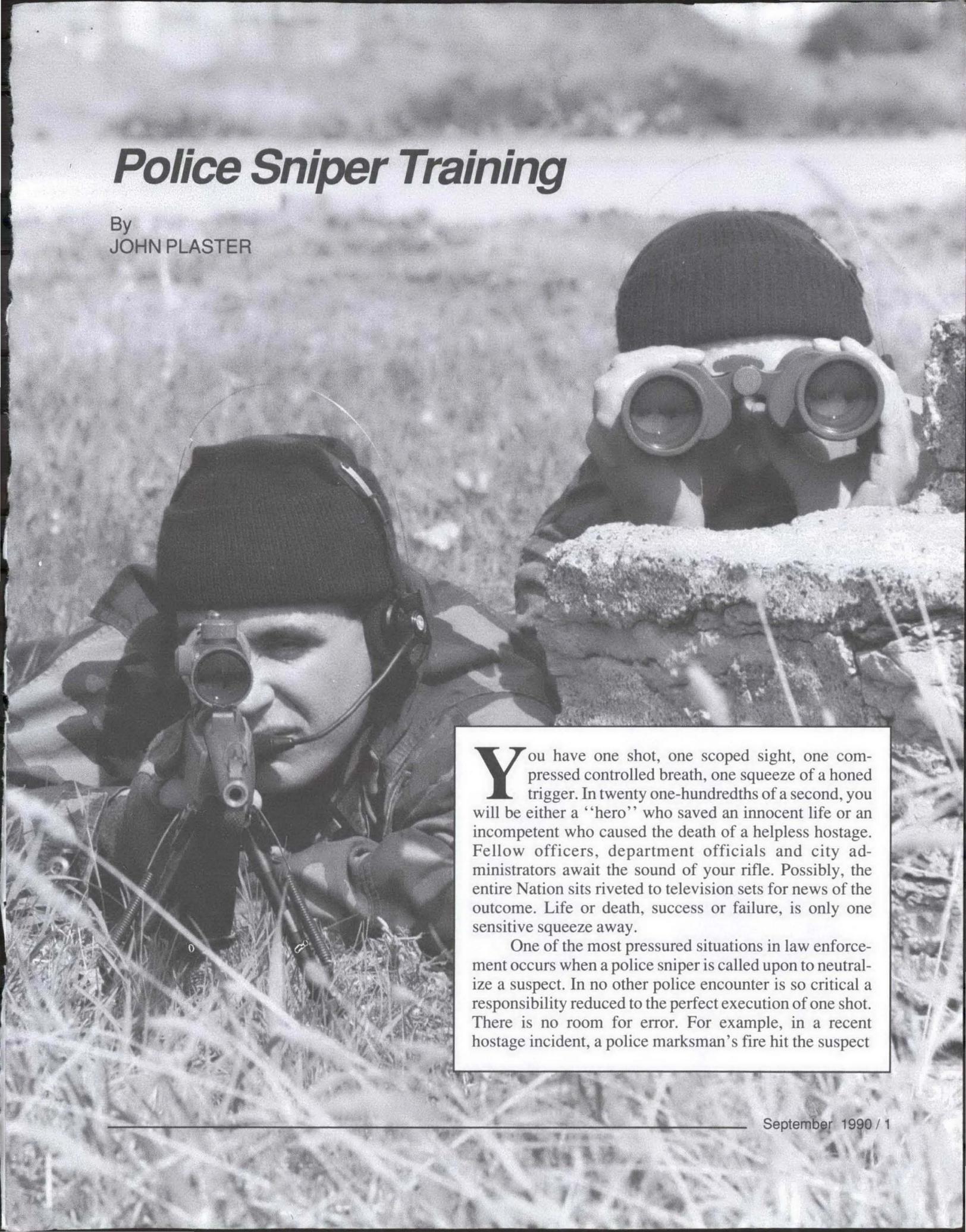
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# Police Sniper Training

By  
JOHN PLASTER



**Y**ou have one shot, one scoped sight, one compressed controlled breath, one squeeze of a honed trigger. In twenty one-hundredths of a second, you will be either a "hero" who saved an innocent life or an incompetent who caused the death of a helpless hostage. Fellow officers, department officials and city administrators await the sound of your rifle. Possibly, the entire Nation sits riveted to television sets for news of the outcome. Life or death, success or failure, is only one sensitive squeeze away.

One of the most pressured situations in law enforcement occurs when a police sniper is called upon to neutralize a suspect. In no other police encounter is so critical a responsibility reduced to the perfect execution of one shot. There is no room for error. For example, in a recent hostage incident, a police marksman's fire hit the suspect

three times. The shot was accurate, but not precise; deadly, but not instantaneously so. The badly wounded suspect survived long enough to kill a female hostage before dying himself.

The point here is not to criticize one officer's performance under incredible pressures. Rather, it is to better understand these pressures and how to address them in police rifle marksmanship training.

This article summarizes the critical training techniques that can contribute to perfect performance during an actual police sniper engagement. These special shooting exercises can improve the likelihood of perfect one-shot performance, even under physical and psychological stress.

#### BACKGROUND

The Minnesota National Guard Counter-Sniper School is a 7-day course for sniper teams, including those of law enforcement.

At the beginning of the course, instructors issue one live round to students and caution them that during the final course of fire, they must hit a specially designated target with this single round or fail the course. Throughout the training, students are continually reminded that their success depends on hitting one target with this round.

After 7 days of training, and a 10-shot record fire, instructors provide students with a fresh round for the one they've carried for the past week. Then, each student is called upon to engage one special half-size silhouette. The stress accompanying this shot is purely psychological and largely self-induced. No one shouts at the students; no physical stress accompanies this special one-shot kill.

Yet, based on experience, some 33 to 40 percent of all student snipers fail what is a relatively simple shot. For those students who are police officers, the failure record

is 1 in 12. These are the same students who achieved high scores in the preliminary 10-shot record fire. In fact, at times, the same marksmen shot perfect record fires, only to miss the one-shot kill event. In all probability, some special stress factors affected a sniper's performance when emphasis was placed on that one shot. But the stress factors that emerge during training are similar to those a sniper must overcome to achieve perfect one-shot performance during a real incident.

#### FACTORS AFFECTING PERFORMANCE

##### "Know Thyself/Know Thy Rifle"

To achieve near-perfect performance, police snipers must develop complete confidence in their weapons and their abilities. To paraphrase an old adage, "Know Thyself/Know Thy Rifle." Since no two rifles fire precisely the same, officers should be issued one rifle each exclusively for their own use and should practice firing it under many different conditions—summer/winter, day/night, close range/long range, slow fire/rapid fire, uphill/downhill. Snipers must know exactly where the round will impact when set for a particular distance. Although for urban situations the zero at 100 yards is best, firing at other zero-distances is recommended to become familiar with the scope or to determine if the scope has a bullet drop compensator.

Firing only one type of round is also recommended. The round should be match grade, preferably of the same lot number. Based on the rifle's performance, snipers



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Major Plaster is Director of Instruction at the Minnesota National Guard Counter-Sniper School in St. Paul, Minnesota.

should each develop a "data card" that notes precisely how the rifle is "held" or "lead" when engaging targets at various distances under varying conditions. Consistent use of these techniques develops a sniper's confidence in the rifle, scope, zero, and ammunition, so that the sniper knows with certainty where the rounds will impact.

### Patience and Discipline

By developing the qualities of patience and discipline through a concept referred to as, "This is the last shot for the rest of my life," snipers become conditioned to regard each round fired in practice as a single, final event with an exact beginning, a definite end, and a standard for achievement. During range fire, they should individually remove each round from the cartridge box, load it, fire it, "call" it, observe the results through the spotting scope, and then record it.

Recording each shot individually is critical. Police snipers should each maintain a record book to note the history of their fire with a particular rifle. Not only does this help snipers to concentrate on each shot, but it also helps them identify minor deviations in the "book" data versus their rifle and ammunition. This generates information for the data card. For example, a sniper may learn that the first shot fired in practice—the so-called "cold barrel zero"—could vary by several inches from subsequent shots. It's only through such exacting attention to detail that the sniper can develop into a precision marksman who focuses not on three-shot groups but on individual shots.



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**Police snipers  
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Snipers should pace their practice fire by mentally planning each shot, then analyzing it afterward. It is also useful to dry fire between each live-fire shot. Only five rounds should be fired into a single target to better focus the shooter's concentration. Also, accomplished marksmen should fire no more than 15-20 rounds total during a practice session to prevent them from sliding into undisciplined "banging away." By habitually applying these proven techniques during practice fire, snipers develop the patience, concentration, and discipline critical for precision shooting.

### Pressure to Perform

Pressure to perform is purely psychological and self-induced. It is the result of allowing concentration to waver once the person realizes others expect exceptional performance. It reflects a drop in self-confidence, a subtle doubt that success is attainable.

To perform successfully, police snipers must not allow themselves to feel rushed merely because someone gives them the "green light." All doubts must be channeled mentally into oblivion. Contrary to belief, public competition does not alleviate these doubts. The pressure to perform when all attention is focused on the sniper alone, by those who expect perfect results, is totally different from the pressure experienced during competition. During the real incident, a sniper is competing with no one.

Again, learning to overcome external distractions by concentration is the matter at hand. During some shooting exercises, snipers should fire individually while being observed by teammates, as well as when they are experiencing noise and light distractions. Even the conspicuous presence of nonsniper observers increases pressure during firing exercises.

### Perfection Expected

The last factor, "opening day syndrome," occurs when individuals suddenly find themselves facing a situation more real than what was expected. Police officers joke about rookies who mistakenly trip the trunk release when reaching for the shotgun selenoid switch. While fate eventually forgives, this

is not so for police snipers. Less than 100 percent achievement when called upon to perform is not acceptable.

Police snipers cannot be expected to learn from error, except in training. This is why proper training and practice fire is so valuable. Realistic training allows snipers to prepare physically and mentally to function during a stress-filled incident. Just as other officers drill in shoot/don't shoot scenarios and practical pistol courses to hone their skills in realistic settings, so too must police snipers train beyond "bullseye" shooting so that they can perform effectively and turn the mechanical act of shooting into a mechanical act of shooting accurately under pressure.

#### **PRACTICAL SHOOTING EXERCISES**

Taking into account the various stresses under which police snipers must operate, exercises have been developed to help them acquire the qualities needed to perform—concentration, patience, discipline, and confidence. First, practice sessions should be clearly divided into two phases—practice fire and exercises. During practice fire, officers fire at bullseye targets individually and at their own pace, using a prone-support position with bipod or sandbags. They record each shot and confirm their zero, thus preparing themselves for the exercises that follow.

In the second phase, snipers engage specially modified silhouette targets. Learning to focus on vital areas makes the exercises more demanding. Therefore, affixed to each silhouette is a balloon,



“**Qualities such as concentration, discipline, confidence, and patience must be honed to fire successfully under pressure.**”

either on the head or center chest. The size of the balloon is proportional to distance—3 inches at 100 yards, 5 inches at 200 yards, 10 inches at 300 yards. By using balloons, a less-than-precise shot that otherwise would be credited as "excellent" now becomes a complete miss. And psychologically, the instant feedback of watching a "bad guy" wave back causes snipers to resolve to hone their skills. Likewise, confidence soars after repeated successes. The purpose of these exercises is not marksmanship practice, which the sniper has already completed, but the application of it.

To underscore further the emphasis of one-shot kills, snipers

receive only one round for each engagement. If they miss a balloon, they cannot engage it again. This helps them to recognize mentally the finality of each shot fired. Also, to instill a "pressure to perform," snipers complete several exercises individually while others watch or with external light and sound distractions. For variety, snipers fire the exercises in daylight and at night under artificial illumination.

Interestingly, most students who fired well during the bullseye practice have exaggerated expectations when they first fire these exercises. And typically, they initially miss. However, after several drills, they quickly acquire the necessary skills for successful engagements.

#### **The Fleeting Target**

This is the most frequent exercise used in training because it almost duplicates reality. The rifleman, who has been issued a green light, knows generally where the suspect will appear, but must wait until the target surfaces, which will only be for a few seconds.

At the start of the exercise, the snipers are allowed to see the target and comfortably "lock on," readying themselves and their rifles for what could be a long wait. Then, the target is lowered and rotated. At some point over the next 30 minutes, the target reappears only once. Students start with a 15-second exposure, and as their skills improve, the time of exposure lessens to 5 seconds. This exercise helps riflemen to develop patience and concentration.

For ranges that lack rotating targets, the same simulation can be achieved by a range officer with a

stopwatch. While pacing back and forth behind the shooters, the officer suddenly shouts, "Green light," and slaps a particular shooter's leg. This puts the shooter on notice that within the next 30 minutes, the subject will appear and should be fired upon. This version, too, is conducted randomly.

### Multiple Hostages

In this exercise, two similarly colored balloons tightly bracket a third balloon, which represents the suspect. The other balloons are the hostages. If arranged horizontally, the balloons indicate the need for a correct adjustment for wind; vertically, they emphasize adjustment for trajectory/range. By adding hostages, the pressure escalates from concern for a possible miss to concern for accidentally hitting a hostage. Even a slight crosswind bounces the balloons about, requiring a very carefully placed shot and forcing the highest level of concentration. Noise and light distractions and the presence of observers enhance the pressure applied during this exercise.

### Surgical Shooting

This timed exercise elevates the complexity level of hostage rescue shooting. Down range are three 8 1/2 x 11-inch portraits juxtaposed on a target. At the start of the exercise, the shooters, positioned 25 yards from the firing line, are allowed 10 seconds to study the mugshot of the suspect. Then, each shooter must dash halfway to the firing line, snatch one round, low crawl the final 12 1/2 yards to the weapon, load it, spot the correct suspect, engage the suspect, and



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**Realistic training allows snipers to prepare physically and mentally to function during a stress-filled incident.**”

dash back to the finish line with the expended cartridge. The timing starts from the instant the shooters see the mugshot. The exercise is a "no go" if a shooter fails to hit the suspect, mistakenly hits the hostage, or fails to bring back an expended cartridge. This exercise teaches the student to focus on a suspect's face instead of attire (to preclude changing clothes), as well as to develop concentration, discipline, and physical conditioning.

Using photographs of similar-looking people increases the degree of difficulty. For example, targets of all white males with short hair, using side views of the suspect, or altering a suspect's appearance with sunglasses or changing the hairstyle

or length of hair make it harder for the shooter to select the correct target. When firing from more than 150 yards, this becomes a team event that requires both a sniper and spotter with a spotting scope to ensure correct identification.

### The Simultaneous Engagement

Three balloons are arranged exactly as in the multiple hostage exercise, only this time there are one hostage and two suspects. This requires that two snipers engage exactly at the same time. One officer, called the base sniper, coordinates fire with a partner, confirms each is ready to engage their respective suspects, and then calls a "three, two, one" countdown. Both fire when they hear the "n" in one.

For the base sniper, this drill teaches how to control breathing in order to be able to both fire and talk. The partner learns how to time fire the weapon so that an accurate shot can be squeezed off at someone else's order. In addition to being useful against multiple targets, this technique can be used to smash through plate glass with one round and take out a suspect accurately with a round arriving a split second later.

Noise and light distractions increase this exercise's difficulty. Also, voice-activated radios enable two snipers to be positioned some distance apart.

### Neutralizing Shots

This exercise demands true precision, for it challenges the shooter to place accurately a round in a suspect's neural motor strips or brain stem, the tiny impact points for head shots that neutralize a

human almost instantly. This is a "no option left" engagement, because the suspect is pressing a weapon against a hostage and anything but a neutralizing shot could still allow the trigger to be pulled.

Since the intended impact points are less than 2 inches wide, this exercise should not be practiced or attempted from more than 200 yards, although 100 yards is preferable. The targets should be life-size human head photographs, side views for engaging the neural motor strips (above each ear), or a back view for engaging the brain stem. These areas should be highlighted, both to help the sniper focus on the correct impact point and to evaluate the results clearly.

This exercise can be made more demanding by imposing a time limit, or by adding visual and noise distractions and the presence of onlookers. The most demanding level would be to combine it with the fleeting target exercise.

### The Fog of Battle

This exercise pits three or more snipers against a single target. However, only one rifleman will actually fire and under considerable peer pressure.

Posted 100 yards down range is a single target board displaying three different 8 1/2 x 11-inch facial photographs. All sniper rifles are grounded on the firing line, and the shooters are clustered behind the line, around the range officer. On the range officer's command, one or more smoke grenades are released down range. While the smoke builds, the snipers study a mugshot identical to one of the target photos.



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The range officer then gives one live round to each sniper. When satisfied the targets are thoroughly masked by smoke, the range officer issues the green light and all snipers rush to their weapons.

Peering through rifle scopes, the snipers wait for the smoke to dissipate enough to identify the correct photo. The first shooter to shout, "Got him," is the only one allowed to engage, and this shooter has 5 seconds to do so. Some shooters "call" the target prematurely; others miss or don't even get a shot off. Others are prone to choke up in front of onlookers.

This exercise helps to overcome these handicaps, while help-

ing snipers to gain confidence in each other's judgment and shooting abilities. It can be repeated merely by having several sets of mugshots and photos/targets posted down range. However, it must be conducted at 150 yards or less to facilitate identification through a rifle scope.

### The Followup Shot

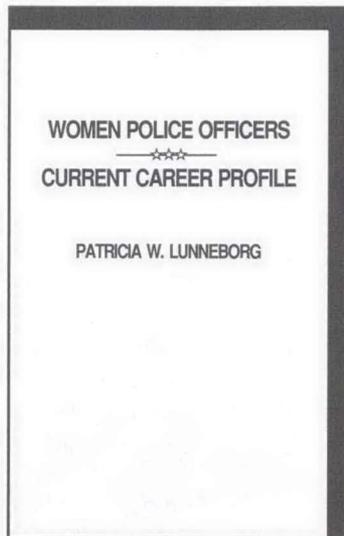
This exercise is actually a contradiction to the philosophy of one-shot kills. In this drill, snipers must rebolt their weapon instantly and prepare to re-engage the same target. Why? Even the most perfectly fired shot can be disrupted by a sudden gust of wind, can be slightly deflected by an invisible wire, or can result in only a wounding hit.

For this exercise, two or more balloons are placed on a single silhouette. The sniper is issued the same number of rounds, all of which are loaded into the rifle. To add pressure, this is a timed event that begins when the first shot is fired and ends with the last shot fired. Regardless of time lapsed, the shooter earns a "no go" if no balloon is hit.

### CONCLUSION

Accuracy is not the sole determinant of a police sniper's performance. Qualities such as concentration, discipline, confidence, and patience must be honed to fire successfully under pressure. These procedures and shooting exercises can contribute to a shooter being psychologically and physically prepared to neutralize a suspect—one of the most pressured situations in law enforcement.

**LEB**



**Women Police Officers:  
Current Career Profile**, by Patricia  
W. Lunneborg, Charles C. Thomas,  
Springfield, Illinois, 1989.

Projections by the Bureau of Labor Statistics indicate that by the end of this century, nearly 50,000 women will be employed as law enforcement officers—about 20 percent of the total number of sworn officers. The steady growth of women in the profession is due to the support provided by law enforcement executives, as well as the role models offered by successful female officers. These concepts, and others, are described at length by Dr. Patricia Lunneborg in her comprehensive review of women in law enforcement in *Women Police Officers: Current Career Profile*.

This book brings the police administrator or social scientist up to date on studies of women in law enforcement. While the studies compiled in the text are generally available to the police recruiter or manager, this book provides a useful source of information, categor-

ized by subject and summarized for quick review. Study topics range from background and lifestyle to perceptions of performance. Each pertinent study has been analyzed and compared with similar studies in order to provide the reader the most comprehensive look at the field's most current concepts.

The book is more than just a quick look at "where we've been, and where we are." The author challenges the law enforcement manager and the social scientist to explore the future of women in a once exclusively male field. The chapters on job motivation, retention and promotion are "must reads" for the police personnel specialist. The chapters on performance, policing style and perceptions of performance reflect the latest research and are valuable resources for the police manager.

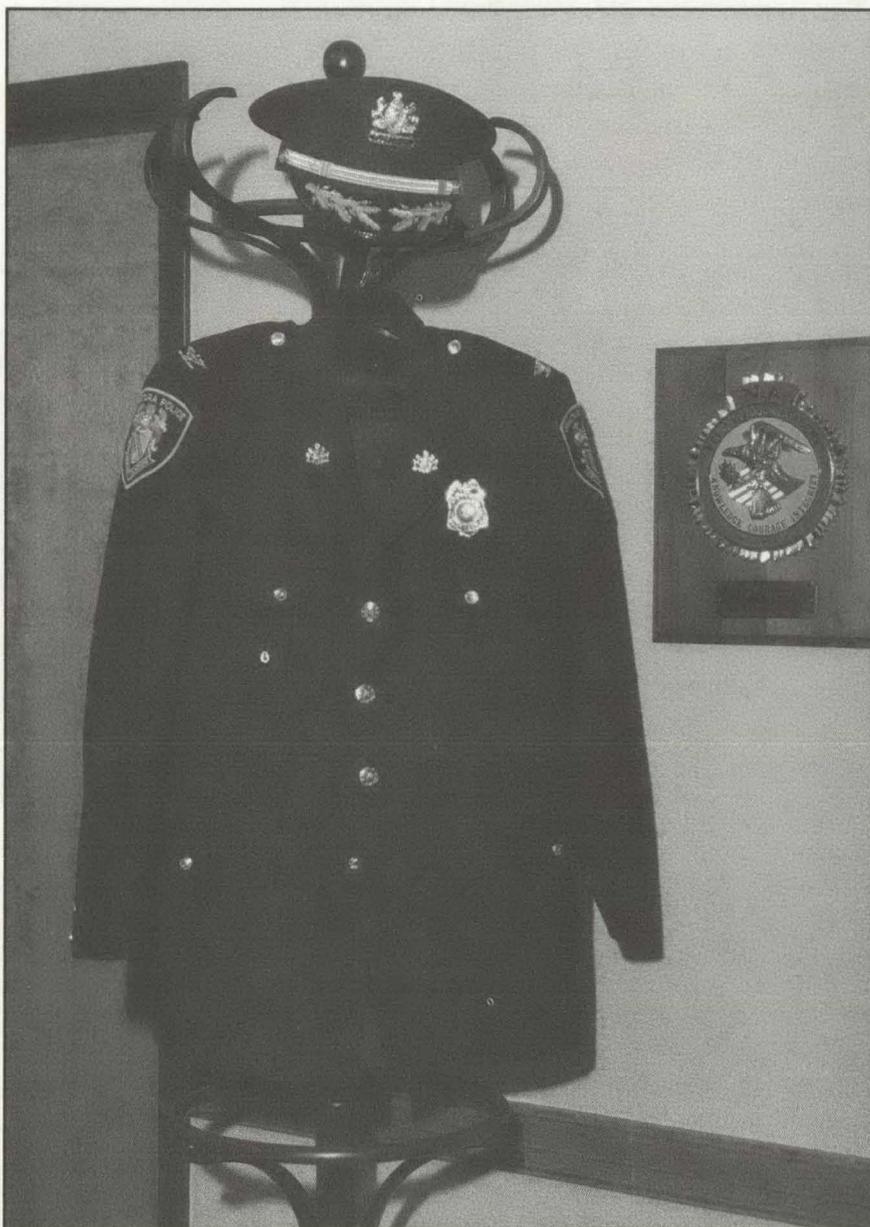
Throughout *Women Police Officers: Current Career Profile*, Dr. Lunneborg offers personal perceptions regarding the growth of women in law enforcement, both in terms of numbers and individual maturation. Much progress has been made by and for women in police work, but much remains to be accomplished. As a group, women are reaching their third decade of patrol assignment and other duties long considered to be for males only—and they are achieving ranks previously thought to be unobtainable. This book recognizes these accomplishments and heralds continued success during the next decade.

Reviewed by  
SA Kathleen McChesney  
Federal Bureau of Investigation  
Office of the Deputy Director  
Washington, D.C.

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# Promotion to Chief

## Keys to Success in a Small Department



By  
CARL L. SPICOCCHI

**I**n May 1987, I became chief of the Swatara Township, Pennsylvania, Police Department. Like most communities in the country, Swatara's police department is small. Still, when I was appointed chief, I realized that I would be facing formidable obstacles. Some of these obstacles had been anticipated, and some had not. I had gained many advantages—or perceived advantages—as a result of my new position. Independence and more responsibility were the “rewards” for a career in law enforcement. But, as I quickly learned, the independence and responsibility of the position could easily become negative factors to a chief ill-prepared to handle them.

What follows is an account of some of the problems that I faced after becoming a new chief in a small department. I will present some of the hazards that confront a new chief and possible solutions or ways to avoid these hazards. This is a personal account, but one that may aid others when they become chiefs of small police departments.

### Going from Outsider to Insider

As a newly appointed chief from outside the department, I

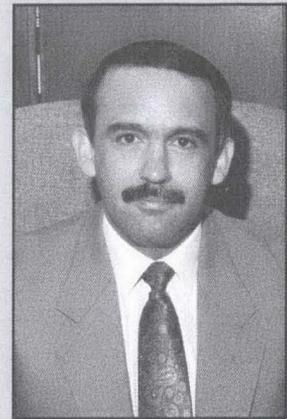
immediately discovered new problems that I would have to face. Understandably, various rumors circulated throughout the force about me, even before I took command.

Since all in the department were concerned as to who I was and what I expected, I tried to minimize their fears of the unknown almost immediately upon taking office. Sometimes, subordinates view a new chief as a "headhunter." Suspicion and general paranoia create an atmosphere that threatens efficiency and conscientious performance. I attempted to quell this belief by advising all of my management style as early as possible. I was careful not to build any unrealistic expectations; if I promised things that I could not deliver, I would only damage my credibility.

In a small department, it is not only preferable but also essential for the chief to establish and develop a rapport with the officers. As a new chief, I sought to allay their natural fears and encouraged them to bring problems to my attention. Because they had been in the department longer than I, they were in a better position to know what policies and procedures didn't work or what needed to be modified. Together, we would focus on what needed to be done.<sup>1</sup> More importantly, I avoided saying too often, "We did it this way in my former agency." Instead, I adopted methods with which I was familiar, but only if I thought these procedures could be adapted successfully to the needs of my new department.

I also resisted being overly authoritarian. While departments that are experiencing severe dis-

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*Mr. Spicocchi is Chief of the Swatara Township, Pennsylvania, Police Department.*

ciplinary and morale problems may require a more autocratic management style, most departments benefit from a style that enhances cooperation rather than demands it. Managers who rely solely on power will cause the productivity of subordinates to plunge. They will shift their energies from doing their jobs to fighting the one in command.<sup>2</sup> While there is still debate regarding the autocratic versus participative management styles, practice suggests that the best choice may be a "situational" approach, in which a management style is adapted to the particular environment.<sup>3</sup> I found that adopting a flexible approach to management was more practical and more effective than attempting to maintain a certain management style for every situation.

Another area that can cause problems for a newly appointed manager is the transition from individual performer to chief. I learned that this can be very difficult. If chiefs are not properly

prepared and oriented, they may act inappropriately, causing problems that otherwise might not have arisen. As a result, they become problem managers, and so do the members of their command.

For the new chief, developing a personal relationship with a more experienced chief can be very beneficial. This experienced manager can serve as a mentor to the newly appointed chief. I turned to a supportive chief in a neighboring jurisdiction to help acclimate me to the customs, values and social network in which I would be operating.<sup>4</sup> I found that in times of stress, especially during the first few months of transition, it was very helpful to have a source outside the department to turn to for support and a sense of reassurance.

### **Implementing Change**

There are two opposing approaches regarding the implementation of change. One theory is to move slowly, since people and in-

stitutions are generally not receptive to rapid change. The second option for the new chief is to make change now, especially if a problem is significant, because the power to effect change may lessen in time.

I realized that the most power that I might ever have was during my first 2 months in office. Initially, people yielded to what they perceived as my expertise. However, as is the case with most chiefs, once I was in office for some time and had alienated a few people, both inside and outside the department, I found that my authority remained the same, but my power to effect change had eroded.<sup>5</sup>

I found that focusing on relationships and learning the intricacies of the department consumed most of my first few months in office. I also learned that evolutionary rather than revolutionary changes were the easiest to accomplish and were more readily accepted by personnel in the department. Most importantly, I found that input from individuals affected by any change was important, and should be sought before a decision to make a change is implemented.

### **Avoiding Occupational Hazards**

There are many problems or hazards facing police chiefs today. As civil liability concerns continue to heighten, a single split-second act of one officer may result in the assessment of punitive damages against the chief and the officer.

Another hazard relates to decisionmaking. I quickly realized that careful consideration must be given to every decision; if the chief makes the wrong decision too often,

staff and officers begin to lose confidence. At the same time, a chief who hesitates too long in making decisions will be labeled as indecisive. I found that as chief, making decisions was not an easy task. Basically, I was also caught

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***Because of the many demands on my time, I realized that my temperament was going to be tested almost every day.***

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between both liberals and conservatives seeking to influence police operations. But what I had to remember at all times was that I had to decide what was best for the citizens, the department, and the community, regardless of the situation or the parties involved.

Therefore, newly appointed chiefs must learn to deal effectively with problems of police management. New chiefs must work to enhance their personal leadership skills through mentors or executive management training, while simultaneously managing the operations of the department.<sup>6</sup>

Vying for the top executive position too early is also an occupational hazard. Although wanting to “move up the ladder” as quickly as possible is a natural aspiration for a motivated, career-minded law enforcement officer, I would caution

strongly against becoming chief too early. Middle managers in their thirties, especially in smaller departments, who want to be police chiefs “now” should be content with being number two (or three) for the present. A police executive is expected to be an innovative, dynamic, problem-solving leader, and it’s difficult to remain in a high-pressure position such as this over a 20-year period.<sup>7</sup>

### **Delegating Authority**

Time is limited for any chief. Like most chiefs, I found that contacts with the city council, mayor, middle managers, and other police officers accounted for much of my daily schedule. The demands of the organizational structure—conducting inspections, evaluations, and ensuring conformity within the department—consume even more time, as do the research and planning needed to run the department efficiently and effectively. With all of these demands, a new chief could quickly become enslaved by the position. I realized that proper delegation of duties would be essential to avoid this situation.

Delegation is the art of gradually giving increased responsibility to subordinates. First, this means defining the functions and responsibilities that should be carried out by those having less authority but who can still complete tasks successfully.<sup>8</sup> Then, once these functions and responsibilities have been defined, the level of authority necessary to accomplish each of these tasks is established. Delegation involves a four-step process:

- The chief must transfer responsibility for some tasks to a subordinate.
- The subordinate must accept the responsibility.
- A mutual trust must develop between the chief and subordinate.
- A system of follow-up must be established to ensure that delegated tasks are completed successfully.<sup>9</sup>

One of the key reasons for delegating tasks is to ensure time in a chief's day for personal solitude. Because of the many demands on my time, I realized that my temperament was going to be tested almost every day. I could either become run-down and react to every problem in an unfocused, knee-jerk manner, or I could renew my resolve each day to look calmly at problems and attempt to correct them. I realized that it was imperative to take time out of each hectic day and devote it to quality thinking. It is important for a chief to set aside time daily for creative thinking and planning for the future.

I also discovered that my natural tendency was to try to do everything myself. Like most chiefs, I was very cautious in delegating authority. After all, I was the chief and every decision made ultimately reflected on my ability to lead.

I soon realized, though, that delegating responsibility was not only a way to make more time for the things I had to do, but it was also essential to the smooth operation of

the department. When delegating responsibilities to subordinates, I kept in mind the following five "Rules of Monkeys."<sup>10</sup> A "monkey" is a term used to define a task, assignment, function or activity that must be performed.

**1. Feed it or shoot it, but never let it starve to death.** The chief must first decide whether the task needs to be performed. Once a decision is made to perform the task, and it is delegated to a subordinate, the chief must make sure to feed the monkey. In other words, the manager must track the progress of the subordinate in completing the task. This can be accomplished by instituting a tickler system of dates that remind the chief to check up on a particular monkey.

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***It is not the manager's role to become involved in constantly making sound decisions but to see that sound decisions are made.***

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**2. Only have those monkeys out that you can afford to feed.** A manager should not delegate more assignments than can be tracked. The manager must not delegate so many monkeys that it becomes difficult to control

the operation. The number of monkeys the chief can have running about depends on time commitments, the ability of personnel to accept the responsibility of working the tasks, and examination of activities currently being performed by the agency.

**3. Never conclude a feeding without scheduling the next session.** Every time a discussion is completed concerning the monkey, the next meeting must be scheduled. Specific goals should be set for the next "feeding" date.

**4. Subordinates will find the time to work the monkeys if you have the time to feed them.** The time that the chief saves by delegating tasks can be used more effectively in acting as manager and advisor.

**5. Keep the "monkey" off your back.** Become a "monkey supervisor," not a "monkey keeper." It is not the manager's role to become involved in constantly making sound decisions but to see that sound decisions are made. I found that the best way to do this is to sharpen the skills of subordinates by consistently giving them more sophisticated assignments and entrusting them with more authority.

### Conclusion

To be successful as a police chief in a small department, I had to be a strong leader, while being sensitive to the needs of people both inside and outside the agency. In order to foster support for new

# The Bulletin Reports

initiatives, I had to "sell" my policies instead of force-feeding them.

I had to be willing to adjust my management style to suit the situation. I also had to be an open, effective communicator, willing to listen to other points of view. I had to develop the art of delegation and trust my officers and staff to do important tasks. And, I had to set aside personal time each day to devote to planning and creative thinking.

I caution any middle manager who is considering becoming chief in the near future to weigh carefully the advantages and disadvantages of the position before deciding. Being the chief of a department requires careful, but decisive, evaluation before every decision. A chief can effect real change in a community, but to be successful in the position requires maturity and a great deal of experience.

**LEB**

## Footnotes

<sup>1</sup> Robert H. Sandwich, "The Newly Appointed Chief from the Outside," *Police Chief*, August 1981, p.16.

<sup>2</sup> Ibid.

<sup>3</sup> Gary Brown, "The Metamorphosis of a Police Executive: How to Climb to the Top Without Falling Off," *Police Chief*, November 1984, p. 28.

<sup>4</sup> Ronald G. Lynch, *The Police Manager* (New York: Random House, 1987), p. 18.

<sup>5</sup> Daniel J. Levinson, *The Seasons of a Man's Life* (New York: Alfred A. Knopf, 1985).

<sup>6</sup> Harry W. More, Jr. and John P. Kenney, *The Police Executive Handbook* (Springfield, Illinois: Charles C. Thomas, 1986).

<sup>7</sup> Ibid.

<sup>8</sup> Supra note 4, p. 141

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

## Drugs and Crime Data

*Federal Drug Data for National Policy*, a report issued by the Bureau of Justice Assistance, launches a series of publications from the Drugs & Crime Data Center & Clearinghouse of the Department of Justice. It focuses on the sources of drug information that drive national drug policy.

The report is principally for those involved in the formulation of drug policy at the national, State, and local levels and provides an understanding of the research and statistical information available to guide the laws, regulations, and practices that constitute

public policy. It identifies 38 Federal sources of drug data and gives an overview of available surveys that provide data on the extent of drug use by the U.S. population and the consequences of using drugs. Other topics covered in this report include information on the source and volume of illegal drugs, substance abuse treatment and prevention, and processing drug offenders.

*Copies of this report can be obtained from the Drugs & Crime Data Center & Clearinghouse, 1600 Research Boulevard, Rockville, MD 20850, telephone number 1-800-666-3332.*

## Drug Enforcement Monograph

The Institute for Law and Justice, in conjunction with the Bureau of Justice Assistance, recently published a monograph, *Street-Level Narcotics Enforcement*. It provides law enforcement agencies with detailed methodologies for developing and executing drug enforcement programs. Focusing only on street enforcement, this monograph directs its information to the retail market, not to the wholesale drug distribution network. It concentrates on the places where a significant part of that market operates, on streets

or in other public places, where supply actually meets demand and drug sales take place.

Chapter 1 of the monograph describes 11 distinct street enforcement tactics and examines each one separately. The remaining chapters discuss the background for choosing and carrying out particular street enforcement tactics.

*To obtain a copy of the monograph, contact the Institute for Law and Justice, 1018 Duke Street, Alexandria, VA 22314 or call 1-703-684-5300.*

## Behavioral Analyses

The National Center for Missing & Exploited Children, in cooperation with the Federal Bureau of Investigation, has published two booklets that provide behavioral analyses of child molesters and child sex rings. Each monograph focuses on the criminal justice system and is directed to law enforcement officers investigating cases of child sexual exploitation.

In the child sex ring booklet, the author begins with definitions of basic terms and phrases and then provides an overview of the characteristics, dynamics, and types of child sex rings. The booklet also offers general guidelines on how to apply the behavioral dynamics covered to the investigation and prosecution of child sex cases.

The second booklet covers topics that are vital for the successful detection, investigation, arrest, and prosecution of adult child molesters. It provides information on the nature of behavior and emotional patterns of child molesters and discusses the major problems that make the investigation of child sexual abuse and exploitation difficult for law enforcement.

*Copies of both booklets can be obtained from the National Center for Missing & Exploited Children, 2101 Wilson Boulevard, Suite 550, Arlington, VA 22201, telephone number 1-703-235-3900.*

## AARP Publications

Two publications concerning legislation and services available to victims of crime have been released by Criminal Justice Services of the American Association of Retired Persons (AARP). ***Summary of State Legislative Activity Concerning Treatment and Services for Victims of Crime with Emphasis on Older Victims*** (stock number D 13671) provides a summary of State legislative activity in this area during the years 1987 and 1988. The other publication,

***Issues Affecting Crime Victims; Background, Current Status, and Implications for Older Persons*** (stock number D 13707) furnishes background information and the status of 20 issues impacting upon the rights of or services to victims of crimes as of mid-1989.

Single copies of these booklets are available from AARP, 1909 K Street, N.W., ATTN: Fulfillment, Washington, D.C. 20049. Please include stock numbers with request.

## Corrections Statistics

The American Correctional Association has published a report, ***Vital Statistics in Corrections***, which presents significant data on critical issues to the profession. The report gives agencies profiles on budgets and services and covers personnel compensation and benefits. It deals with correctional officers' education, training, and pay, as well as employee organiza-

tions, unions, and groups. The report also provides statistics on prison populations, court interventions, and the death penalty by jurisdiction.

*To obtain a copy of the report, contact the American Correctional Association, 8025 Laurel Lakes Court, Laurel, MD 20707, or call 1-301-206-5100.*

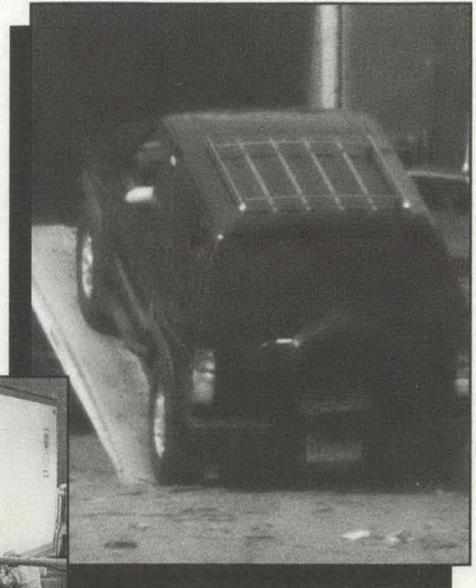
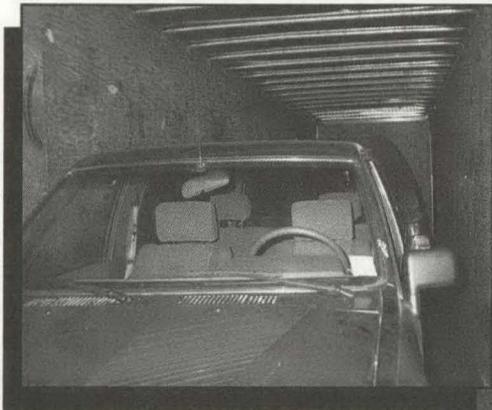
***The Bulletin Reports***, a collection of criminal justice studies, reports, and project findings, is written by Kathy Sulewski. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Room 7262, J. Edgar Hoover Building, 10th & Penn. Ave., NW, Washington, DC 20535.

(NOTE: The material presented in this section is intended to be strictly an information source and should not be considered as an endorsement by the FBI for any product or service.)

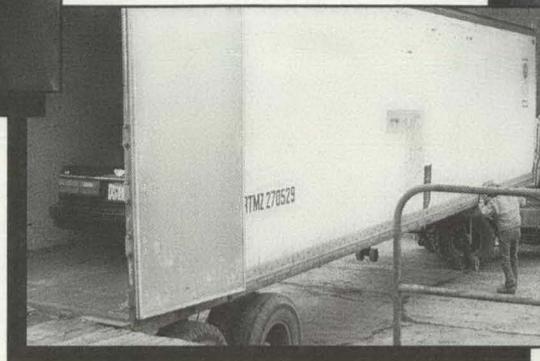
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# Motor Vehicle Theft Investigations

## Emerging International Trends



By  
MARY ELLEN BEEKMAN  
and  
MICHAEL R. DALY



Photos courtesy of  
Detective Maura Gentile,  
New York City Police Department

**E**arly one morning in the Bronx, New York, a team of FBI Agents and detectives from the New York City Police Department (NYPD) watched as car thieves drove a 1987 Mercedes Benz into a 40-foot freight container. A National Crime Information Center (NCIC) check determined the car had been stolen the previous day, only a few blocks from where it was being loaded.

Also, within the hour, a stolen Nissan Pathfinder was loaded into

the same container. Almost immediately, members of the car theft ring drove the container to a port in New Jersey where it was to be loaded onto a vessel bound for a foreign port. Before the ship set sail, however, U.S. Customs officers intercepted the illegal cargo and the vehicles were returned to their owners.

Unfortunately, most car thieves have more success transporting their cargo out of this country. And there are more

vehicles being stolen than ever before. According to Uniform Crime Report (UCR) records compiled by the FBI, there were 1,432,916 vehicles stolen in the United States during 1988. This was an increase of 11.2 percent over 1987 figures, and preliminary records for 1989 indicate that rates are still increasing.<sup>1</sup>

The emerging international character of the vehicle theft trade contributes to this increase, especially in areas with access to large

port facilities. Selling stolen vehicles overseas, where eager buyers will often pay double the original purchase price for a quality automobile, is rapidly changing the domestic auto theft trade. Increasingly, vehicles stolen in the United States are being shipped out of the country where potential profits are far greater. As international trade increases and shipping terminals around the country are expanded, auto theft rings will have greater access to foreign ports.

### Car Theft Tactics

The above examples demonstrate the relative ease with which sophisticated thieves operate in the stolen vehicle trade. Both the Nissan Pathfinder and the Mercedes Benz already had been equipped with ignition keys and both were in driving condition.

Information obtained from sources within the car theft ring indicated that Nissan Pathfinders and Toyota Forerunners were the vehicles of choice among this particular group, simply because they were easy to steal. Thieves need only to pop a door lock to obtain the ignition key code number. With this number and a portable key maker, they make a duplicate key and drive away with the vehicle within a relatively short period of time, reportedly 7 minutes or less.

To steal a Mercedes Benz requires more risk and cunning on the thieves' part, because the value of the Mercedes decreases considerably if damaged. Therefore, it is necessary to steal the key along with the vehicle. This is done either by taking the car at gunpoint while the

driver is stopped for a red light, or by deliberately bumping into the rear of the car. When the driver gets out to examine the damage, someone jumps in and flees with the vehicle, a tactic usually referred to as "bump and run." A somewhat less risky tactic is to steal the Mercedes from a parking garage, either by stealing the keys or paying the attendant for them.

### Shipping Stolen Vehicles

Once a vehicle has been stolen, the process of transporting it out of the country becomes complicated. For the most part, it requires the help of individuals with knowledge of the shipping business, usually known in the trade as freight forwarders. Freight forwarders get paid to make all the arrangements and prepare the necessary shipping documents. Since these individuals rarely see the items being shipped, they can be easily fooled into shipping illegal cargo.

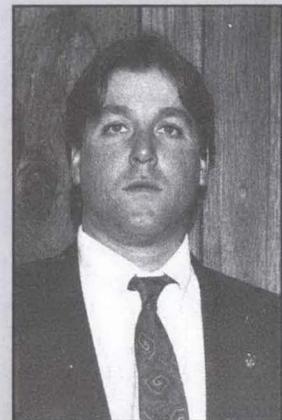
Consequently, the documents prepared by freight forwarders reflect incorrect information regarding the nature of the cargo. An early technique of car thieves was simply to provide incorrect vehicle identification numbers (VIN) to freight forwarders who, in turn, would list these on shipping documents. This was effective until Customs agents became familiar with the technique and began to seize increasing numbers of stolen vehicles at the docks. As a result, car thieves began to tell freight forwarders to list household goods or other items on the paperwork in order to further conceal the illegal shipments.

### Emerging Trends

Where stolen cars were once painted, transported across State lines, and delivered to either unsuspecting or unscrupulous used car dealerships, shipping stolen vehicles out of the country for sale is quickly emerging as the method of choice among car theft rings. The



*Special Agent Beekman is assigned to the FBI's New York City Field Office.*



*Mr. Daly is a detective with the New York City Police Department.*

United States is becoming a supplier of stolen vehicles to third-world countries.

In one Caribbean country, a survey conducted by various law enforcement agencies determined that approximately one out of every five vehicles on the docks awaiting Customs clearance showed clear signs that it had been stolen and shipped from the United States. For vehicles worth over \$15,000, the rate increased to nearly four out of five.

In a statement given by an individual convicted of interstate shipment of stolen vehicles, the thief claimed that almost every vehicle in his native country had been stolen and shipped from the United States. This individual also stated that these vehicles have visible signs of theft damage. Furthermore, he claimed that people in his country order specific types of vehicles to be stolen. Buyers are on waiting lists and will pay top dollar, often twice the original purchase price, for a quality vehicle. Finally, this individual reported that these rings are highly developed and would be very difficult to stop.

#### Determining the Reasons

It is not difficult to understand why shipping stolen vehicles overseas has become a preferred method of car theft rings. Automobiles have long been a scarce and coveted item in many countries. Wealthy citizens are willing to pay large sums for quality vehicles.

In one taped conversation, an individual bragged that he could easily make \$100,000 a month from shipping stolen vehicles. He described his outlays for expenses as follows:

- \$800 to \$1,000 for each stolen vehicle, depending on the year and the type of vehicle,
- \$2,300 for the container and ocean freight (each container holds two vehicles),
- \$300 trucking expenses, and
- \$60 for the freight forwarder.

A stolen vehicle will often net double its value overseas. Therefore, a vehicle valued at \$20,000 commands \$40,000 in the interna-

big losers. Most vehicle owners are reimbursed by their insurance companies, and although the insurance industry covers its losses by raising premiums, the cost is spread out so that it effects everyone only slightly.

Moreover, the thief rarely goes to jail, and in many local jurisdictions, the crime goes virtually unpunished. One individual in New York City had been arrested five times for auto theft-related crimes, and on one occasion, had actually been apprehended while driving a stolen car. Yet, he has not spent any time in jail. He has paid fines totaling no more than \$500, far less than he makes for one stolen vehicle. There are presumably many similar stories in the auto theft trade. The low apprehension, prosecution, and conviction rate of auto thieves make this crime a booming industry, with high profits and low risks.

Geography can be an important factor in determining the frequency of auto theft. The proximity to a port where shipping lines provide access to foreign countries contributes to high automobile theft rates. In New York City alone, the rate of auto theft increased 25 percent in 1988. It is not only New York, Boston, and Philadelphia that report high theft rates but also Houston, Texas, Tampa,

Florida, Newark, New Jersey, and other cities with large international shipping terminals. In fact, according to UCR statistics, 6 of the top 10 cities in vehicle theft are in New Jersey (Irvington, East Orange, Camden, Elizabeth, Tren-

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countries.**  
”

tional market. Shipping two containers (4 vehicles) a month would net well over \$100,000 (tax free).

Another reason for the relatively unchecked growth of the auto theft trade is that it appears to be a “victimless” crime. There are few

ton, and Newark), presumably because New Jersey has one of the largest ports in the country.<sup>2</sup>

### Emerging Cooperation: Operation Tierra Mar

In a joint investigation, code-named "Operation Tierra Mar," the FBI, New York City Police Department, U.S. Customs Service, and the U.S. Attorney's Office penetrated several car theft rings with international ties. Customs agents scanned ship manifests, and from past experience, determined which containers had the highest probability of containing stolen vehicles. Only these containers were inspected.

If stolen vehicles were found, they were offloaded and the container was shipped empty. In some of these empty containers, Custom agents would place a photograph of the vehicle so the individual waiting to receive the shipment would not be completely disappointed.

More importantly, shipping the empty containers gave the FBI enough time to video tape additional loadings before the thieves became aware that their operation was discovered and changed their location. Capturing the loading of stolen vehicles on video was the single most important factor in convicting the people engaged in the scheme.

As a result of the investigation, 11 individuals were convicted and 125 stolen vehicles were recovered. However, even this operation, one of the largest of its

kind, did not put a dent in the illegal vehicle export trade. While investigators were completing their cases against these individuals, they knew that illegal exporters would be devising new methods of shipping stolen vehicles.

**“  
...cooperation between  
Federal, State, and  
local agencies...is the  
best way to combat this  
growing problem.  
”**

### New Regulations, New Tactics

In May 1989, the U.S. Customs Service instituted new regulations regarding the exportation of vehicles from the United States. As a result of the new rules, an exporter attempting to ship a vehicle must provide an original or notarized copy of the certificate of title, or other documentation proving ownership, to the receiving clerk at the point of shipping at least 3 days prior to export.

About a month after these new regulations took effect, illegal exporters devised a way to beat the new system. According to informed sources, legally purchased vehicles with legal certificates of title are being shipped out of the country in compliance with U.S. Customs regulations. When these vehicles arrive at a foreign port, the VIN plates

are removed and sent back to the United States. These VIN plates are then placed on similar stolen vehicles. This process is dubbed "born again," since these vehicles can now be shipped out of the country under the cover of a legal certificate of title.

### Conclusion

While auto theft has long been a problem for law enforcement, the emerging international character of auto theft rings increases the threat of this crime, especially in areas near overseas shipping terminals. As international trade increases, new ports are constructed and existing ports expanded, more cities obtain

access to international shipping lines. Unfortunately, this also enhances the opportunities open to auto theft rings for exporting their illegal cargo out of this country.

As Operation Tierra Mar demonstrates, cooperation between Federal, State, and local agencies that have jurisdiction over the different phases of the illegal vehicle trade is the best way to combat this growing problem. Interagency cooperation will be increasingly important as law enforcement faces this emerging trend in the auto theft trade.

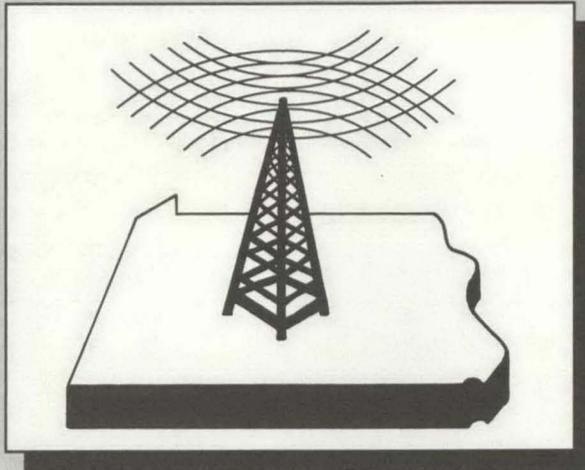
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### Footnotes

<sup>1</sup> Uniform Crime Reporting Program, Federal Bureau of Investigation, *Crime in the United States—1989* (Washington, D.C.: U.S. Government Printing Office).

<sup>2</sup> Ibid.

## Pennsylvania's Interdepartmental Communications System



**N**o one can argue the benefits that effective communications systems provide to law enforcement. Even 60 years ago, Detroit, Michigan, Police Commissioner Rutledge, while addressing the International Association of Chiefs of Police at its 1929 convention, noted: "Snaring criminals in a radio network, woven by broadcasting to radio-equipped cars, has become a matter of seconds...With the use of radio communication between Headquarters and the patrol cars, we are catching criminals red handed...Instead of trailing behind in the dust of the criminal, we are as nearly abreast of him as it is humanly possible to be."<sup>1</sup>

Yet, with all the emphasis being placed on electronic systems and the technological advance-

ments that have occurred since Commissioner Rutledge's speech, the extent of communication among law enforcement agencies to share information lags behind capabilities. Unfortunately, jurisdictional boundaries control inter-agency communication and cooperation.

However, this is no longer the case in the State of Pennsylvania, which supports a statewide police emergency radio frequency. Using a multi-channel radio programmed with each frequency used in a specific location, officers can monitor operational radio transmissions and then initiate an immediate response, while being able to communicate directly with the agency having jurisdictional responsibility for the incident.

### Program Implementation

To begin, the Pennsylvania State Police (PSP) purchased a 32-128 channel programmable mobile radio with the intent of expanding its own radio frequency resources. Then, each communications specialist within the 15 troop areas statewide contacted all governmental agencies within their individual areas to request permission to program the PSP radio with the frequency of those agencies. Once an agency granted permission to use its frequency, the communications specialist advised the PSP Communications Division of the appropriate frequency designation, the P.L. squelch code, if any, and a written authorization of the license holder to allow use of the frequency.

PSP communications specialists received an overwhelming response to their initial inquiries. Over 300 police organizations within and surrounding Pennsylvania authorized the use of more than 500 police frequencies for interdepartmental communications. Even States adjoining Pennsylvania gave permission for their statewide emergency frequencies to be accessed on the PSP radio system. L.E.E.R.N. (Law Enforcement Emergency Radio Network) of Ohio, S.W.E.N. (Statewide Emergency Network) of Delaware, and the New York

Felony Channel are now available to Pennsylvania State Police troopers working near these State borders.

Obviously, it was not feasible, or necessary, for each troop to access all 500 frequencies. Therefore, commanders of local troops relied on their communications specialists to decide what frequencies would be included in their radio systems. The frequencies added by individual troops depended on local and/or regional needs. Many troops consolidated all their desired channel requests into a single troopwide radio program. However, commanders were not restricted in any way concerning their ability to communicate with other agencies. Some troops have as many as three different programs established for the respective stations that comprise their troop. In addition, along with local law enforcement agencies, some troops incorporated the National Weather Service Channel, the frequency for the Pennsylvania Emergency Management Agency, the Pennsylvania Turnpike repeaters frequencies, and the Pennsylvania Department of Environmental Resources Forestry repeater channels.

### Operation

Currently, the Pennsylvania State Police Communications Division is responsible for managing 52 authorized radio programs used throughout the Commonwealth by troopers. No longer must troopers wait for information to be relayed through another agency's dispatcher to a PSP dis-

patcher and then to them. Now, they simply monitor the original conversation and converse directly with the dispatcher of the agency having jurisdictional responsibility.

From the first day of operation, the interdepartmental communications system has aided in solving crimes, recovering property, and saving lives. For example, PSP troopers working the midnight shift in the Harrisburg area monitored the radio frequency of a nearby township police department. After obtaining a description of the car and occupants, the troopers positioned themselves near a burglary location. Within 10 minutes, they stopped the car, held the occupants for the responding officers from the township department, and recovered \$10,000 of stolen property. All this occurred before the township dispatcher contacted the PSP dispatcher by telephone.

In another instance, a DuBois trooper monitoring the county frequency overheard an ambulance driver enroute to a hospital radio discussing traffic congestion. The trooper conversed directly with the ambulance driver to identify the problem, and then went to the source of the congestion to clear a path for the ambulance. The

patient, who was in critical condition, survived.

### Conclusion

Communications is the lifeblood of organizations, especially law enforcement organizations. Communications binds together individual entities within departments so that all their activities can be directed toward common departmental goals. This team effort produces organizational unity.

Team efforts can be expanded statewide. With a direct inter-agency radio communications system, all participating Pennsylvania law enforcement agencies operate within a team concept. As a result, any barriers that existed between State and local law enforcement are coming down. After many years of coexisting, police agencies in Pennsylvania are finally talking.

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### Footnote

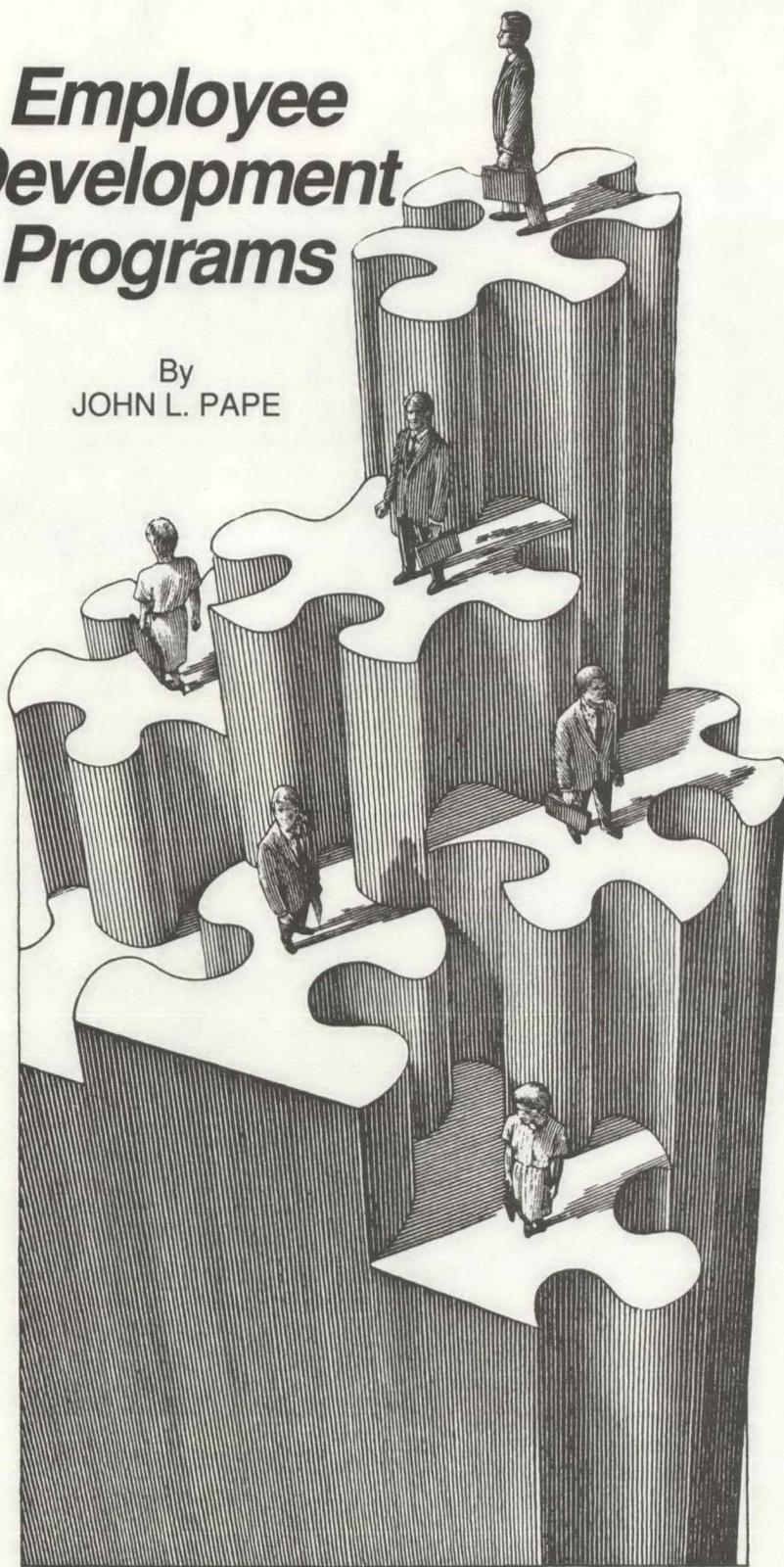
<sup>1</sup> V.A. Leonard, *Police Communications Systems* (University of California Press, 1938).

*Major Robert C. Hickes of the Pennsylvania State Police in Harrisburg provided the information used in this column.*

**Police Practices** serves as an information source for unique or noteworthy methods, techniques, or operations of law enforcement agencies. Submissions should be no more than 750 words (3 pages, double spaced and typed) and should be directed to Kathy Sulewski, Managing Editor, *FBI Law Enforcement Bulletin*, Room 7262, 10th & Pennsylvania Ave., NW, Washington, DC 20535.

# Employee Development Programs

By  
JOHN L. PAPE



Police administrators of small law enforcement agencies face great challenges as they seek to provide service with severely limited financial resources. An area often overlooked as having revenue-saving potential is employee retention. There is no doubt that excessive employee turnover financially drains any police agency, regardless of size. But, in a smaller agency, it can be fiscally devastating. One option is for administrators to consider using a well-structured employee development program to manage employee turnover effectively.

## THE PROBLEM

When a law enforcement agency experiences high employee turnover, it must then bear the expense of recruiting, testing, hiring, training, and equipping replacement officers. In the smaller police agency, expenses related to employee turnover easily lead to acute problems, such as manpower shortages, which usually must be compensated for with overtime expense. The strain placed on the remaining officers can result in poor morale and a loss of overall effectiveness and safety. As a result, the potential for liability may also increase as officers become more likely to make serious mistakes due to fatigue.

Unfortunately, police administrators have often taken the position that little can be done to prevent employee turnover. And, many administrators of smaller agencies believe that they cannot compete with larger ones that are

able to offer better pay with more opportunities for advancement and personal fulfillment. These administrators traditionally accept the fact that their most talented officers will be drawn to larger agencies after a year or two. This, in turn, causes them to possibly reject capable applicants because of their anticipated short tenure with the agency.

In accepting this role as a stepping stone to larger departments, the small agency finds itself with continuing personnel turnover and the related financial burden. Additionally, the level of service can suffer due to the lack of experienced officers, leading to possible problems in public satisfaction with a police agency's mandate to protect and serve.

The traditional solution to this problem is to increase pay and benefits for officers to compete with larger departments. Unfortunately, most smaller communities do not have the necessary financial resources. In addition, even with reasonably competitive pay and benefits, an officer who is not allowed to experience personal and professional growth may begin to look for an agency with greater opportunities.

#### THE APPROACH

What motivates employees to do their jobs to the best of their abilities, or in this case, to remain with a particular police department? According to Abraham Maslow, human needs can be plotted on a hierarchy that begins with the most basic needs and progresses to the most complex. This process

toward self-actualization progresses according to the following:

- Physiological needs—need for survival, food, shelter;
- Safety needs—need for security and absence of threat;
- Affiliation needs—need for close, affectionate relationships;
- Achievement and esteem—need to achieve goals and self-respect; and,
- Self-actualization—need to develop skills and abilities to the maximum.<sup>1</sup>

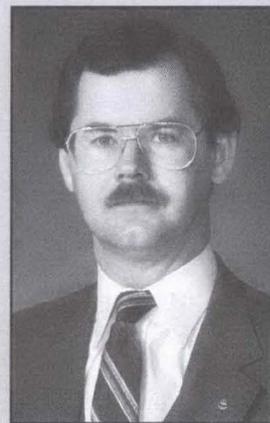
In simplest terms, this means reaching one's greatest potential. While police departments tend to view motivation in terms of providing sufficient pay and benefits to attract and retain employees, they often fail to recognize that human

needs and motivation do not stop there.

Douglas McGregor evaluated Maslow's hierarchy of needs in terms of employment and introduced the relationship between needs and work to modern management. According to McGregor, Maslow's concepts relate to work as follows:

- Physiological—employee needs to perform the job to retain the position and receive pay;
- Safety—employee needs and desires job security;
- Affiliation—employee needs to achieve acceptance within a work group. This relates to productivity in that an employee's output will generally conform to the group's performance standard as a means of gaining acceptance;

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**...the key to resolving excessive employee turnover may be to offer a structured employee development program.**  
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*John Pape is the Chief of the Weslaco, Texas, Police Department. He also served as the Director of Public Safety in Mercedes, Texas.*

- Achievement/Esteem—employee seeks opportunities to achieve, be recognized and to advance; and,
- Self-actualization—employee is given the opportunity to meet challenges that are personally meaningful.<sup>2</sup>

While the traditional incentives of money and benefits may help to satisfy the lower levels of the hierarchy, they do not promote superior performance or employee retention, nor do they help to satisfy the needs in the upper levels of the hierarchy. These upper levels are the levels that the most highly motivated employees are attempting to achieve, and they are also the levels least likely to be satisfied in agencies with no employee development program.

#### THE SOLUTION

For smaller agencies the key to resolving excessive employee turnover may be to offer a structured employee development program. While this may not completely solve the problem, it does enhance the employee's tenure in both time and quality of service.

Many police departments tend to view motivation simply in terms of providing sufficient pay and benefits to attract and retain employees. However, in doing this, they often fail to recognize that while money and benefits may satisfy the lower-ranking police officer, they do not promote superior performance or employee retention nor do they satisfy the needs of higher-ranking officers.

Furthermore, most people need to be recognized for their ef-

forts and want to do a good job because it helps to satisfy their need to feel worthwhile. However, when obstacles are placed in their way, such as a lack of recognition, inadequate rewards/reinforcement, and a lack of professional and personal growth opportunities, employees

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**Unfortunately, police administrators have often taken the position that little can be done to prevent employee turnover.**  
 ”

become frustrated. Therefore, the key is to structure an educational development program to attract highly motivated applicants and to help employees fulfill needs traditionally overlooked. And, while employees may eventually move into other agencies, the program helps to ensure that during their tenure, officers will be more motivated and want to perform as best they can.

The employee development program can be as extensive as the administrator wishes, but it must incorporate at least the following points:

- Implementation of high professional standards
- A strong reward/reinforcement plan
- An educational incentive plan, and

- A professional development plan.

#### High Professional Standards

High professional standards are vital to an employee development program simply because anything less would not attract the more highly qualified and more motivated individual. Agencies must reflect a sufficient degree of professionalism for employees to take pride in their jobs. This process begins with a positive and professional recruiting and hiring process aimed at identifying the most qualified applicants.

Further, a professional approach to policing includes the professional appearance of personnel, vehicles, and facilities. In addition, a thorough procedural manual and code of conduct is vital, as is a comprehensive and fair disciplinary system. Training and management procedures must also adhere to the highest professional standards. But, above all, pride and professionalism must be emphasized continually to all personnel.

#### Reward/Reinforcement System

The second point of the employee development program involves a strong reward/reinforcement system. Too often, management only doles out disciplinary action and neglects to recognize employees who deserve commendation. By implementing a strong reward/reinforcement system, smaller agencies promote the delivery of superior police service and greatly improve departmental morale.

This recognition program can be as simple or as elaborate as the

department administrator wishes. For example, commendable acts of a lesser nature can be acknowledged through letters of commendation. For more noteworthy acts, departmental certificates of commendation can be issued. For the most noteworthy acts, police recognition medals or ribbons can be awarded to deserving personnel. Criteria for various police awards can be established on a departmental basis. Additionally, the local media should be notified and the officer publicly praised.

### **Educational Incentive Plan**

The third, and most important, facet of an employee development program is an educational incentive plan. Such a plan allows for the officer's educational development, while making that officer a more productive and effective member of the department. It also naturally attracts applicants who want to pursue higher education. Obviously, the officer who desires personal improvement is highly motivated and a desirable asset to any department. And, by encouraging educational development, an agency can ensure the officer's retention at least until completion of college. Normally, it will take an officer 5 to 8 years to complete a baccalaureate degree program, depending on the course load the officer carries.

An educational incentive plan could also include a pay scale based on education and a tuition reimbursement plan. The incentive pay scale can be adjusted to the needs of the individual department. And, to ensure that the semester hours represent quality work, the department may wish to recognize only those

hours that meet a set quality point average. Compared to across-the-board pay raises, an incentive plan can be substantially less expensive.

Under the tuition reimbursement portion of the plan, officers enroll in the course(s) at an accredited institution at their own expense. After successfully completing the course(s), officers who verify completion would be appropriately reimbursed. As with the incentive pay scale, an agency may wish to reimburse only those course(s) completed with a grade of "C" or better. Also, limiting the number of reimbursable hours per semester prevents employees from overloading, which could result in decreased proficiency in both academic pursuits and at work.

Work schedules should be structured to allow employees to attend classes. This can be accomplished by rotating shifts in

### **Professional Development**

For those employees seeking personal fulfillment from professional ability rather than through formal education, a program for professional development is essential. Too often, employees are not offered sufficient opportunities for professional development and tend to remain in rigidly assigned positions. However, a reasonable system of rotating assignments, patrol enhancement techniques, and training opportunities can be initiated. The number of officers involved at a given time, and the frequency of assignment rotation, can be tailored to a particular department's needs.

Rotating assignments can be as simple as assigning a patrol officer to work in another assignment for a temporary period of time. After completing the temporary duty, the patrol officer will have

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...an officer who is not allowed to experience personal and professional growth may begin to look for an agency with greater opportunities.  
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conjunction with local university semesters. While an occasional conflict may arise, they can usually be easily resolved.

An educational incentive plan restructures the pay scale and rewards employees for pursuing and achieving educational goals. By implementing such a plan, an agency benefits from better educated, highly motivated, and personally fulfilled employees.

gained knowledge and practical experience in another police function while experiencing professional growth. Such temporary assignments also allow administrators to evaluate the employee's performance in the temporary position for possible later consideration for permanent assignments.

Patrol enhancement is another method that can stimulate and develop an officer's abilities. Patrol

enhancement is simply allowing an officer to answer the initial call, conduct the investigation, file the charges, obtain the arrest warrant, and arrest the perpetrator without the assistance of another officer. In many agencies, this is often done out of necessity. However, as departments grow, they tend to become more specialized. This lets officers know that they are vital players in the department's mission. While such a program can be tailored to any agency, the key to patrol enhancement is for the administrator to view patrol officers as vital resources.

A final step in an agency's professional development program involves an aggressive use of police training resources. Many times, training opportunities end with the basic academy or the fulfillment of State-mandated minimums. Even so, an agency can offer a variety of opportunities for professional training. If the agency is too small to offer formal inservice training, it can use the resources of regional police academies, technical training centers, and even larger neighboring police departments. While every officer cannot attend every course, the administrator should allow as many officers as possible to participate. Another avenue to encourage officers to augment training on their own time is for an agency to consider paying for meals and providing transportation. What is important is that officers not be discouraged from developing themselves professionally.

#### **THE MERCEDES POLICE EXPERIENCE**

In 1986, an employee development program was a major

factor in the departmental reorganization of the Mercedes, Texas, Police Department. The department is comprised of 25 officers serving a municipality of approximately 14,000 persons.

The first step of the reorganization was to establish high professional standards throughout

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***A properly structured and managed employee development program can be extremely beneficial to both the police department and the police officer.***  
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the department. Once these standards were established, the department implemented a rewards/reinforcement system to recognize and promote superior performance. As a result, the delivery of police service showed an immediate marked improvement, and public confidence increased.

Patrol enhancement in the form of limited follow-up responsibility in certain offenses, team policing duties, and walking patrol assignments became a part of the program. Officers were extremely receptive to these duties and soon began to suggest that more assignments be added to the patrol enhancement program. The public was also quick to note the officers' increased involvement.

The department then initiated a policy requiring a minimum of 40

hours inservice training per year per officer. In addition, a wide variety of training was offered to police personnel. At the end of 1986, after 7 months of this policy, each officer had achieved an average of 96 hours of training. By the end of 1987, this average increased to 109 hours of training per officer.

Prior to implementing the educational incentive plan, only two officers had any college-level education, only one had an associate's degree in law enforcement from a community college, and one officer was attending college. Within the first year of the program, 6 officers earned college credits, and 10 were actively enrolled in college courses. In addition, recruiting efforts attracted three officers with an average of 2 years' college experience, all of whom indicated that they were attracted to the department because it would allow them to continue their education.

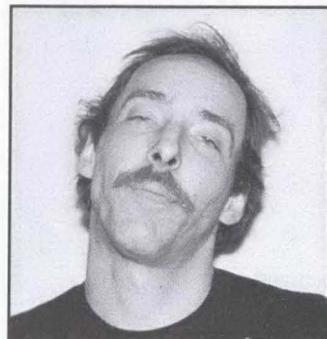
Subsequent recruiting efforts also resulted in applicants who were well-educated, highly motivated, and extremely desirable candidates for employment. In addition, prior to the implementation of the employee development program, the agency's turnover rate was 38 percent. In the 24-month period following the full implementation of the employee development program, the turnover rate decreased to 7 percent.<sup>3</sup> This reduction in the turnover rate resulted in an estimated budgetary savings of at least \$53,000.

#### **CONCLUSION**

A properly structured and managed employee development

## VICAP Alert

### Randolph Bernhard Jakobetz



program can be extremely beneficial to both the police department and the police officer. By structuring the program to appeal to highly motivated individuals, providing them with opportunities to satisfy their needs for esteem and self-actualization, and allowing them an opportunity to contribute to the overall mission of the organization, a police department can significantly improve employee job satisfaction. This job satisfaction will translate into improved morale, greater initiative, and a desire to deliver superior service to the community. This program will also significantly reduce employee turnover within the smaller agency which, in turn, saves the department money.

Departments should realize that the initial expense of implementing an employee development program is minimal when compared to the benefits it can offer to both the law enforcement agency and the officer. But, most importantly, as a result of the program, employees experience professional growth and development, and the agency gains better trained and personally satisfied employees. **LEB**

#### Footnotes

<sup>1</sup> Abraham H. Maslow, *Motivation and Personality* (New York: Harper and Row Company, 1954).

<sup>2</sup> Douglas McGregor, *The Human Side of Enterprise* (New York: Viking Press, Inc., 1971).

<sup>3</sup> An annual turnover rate of 5 to 15 percent is generally considered to be within the acceptable range for a fully developed organization. But, the ideal turnover rate is 7 percent. Roy Clinton McLaren and O.W. Wilson, *Police Administration* (New York: McGraw-Hill Publishing, 1977).

AKA: Randy  
RACE: Caucasian  
DOB: 10/9/48  
POB: Wichita Falls, Texas  
HEIGHT: 5'11"  
WEIGHT: 160 lbs.  
HAIR: Brown  
EYES: Green  
BUILD: Muscular

#### CRIME

Randolph Bernhard Jakobetz was arrested on 7/18/89 by FBI Agents and Vermont State Police on Interstate 91 near White River Junction, Vermont. He is currently in custody, charged with kidnapping.

#### BACKGROUND

Jakobetz has a history of juvenile offenses in New York State, including grand larceny, burglary, escape, and violation of parole. In August 1979, while

living in Albuquerque, New Mexico, he was arrested for armed robbery with a deadly weapon and commercial burglary. He was extradited from New Mexico to New York in June 1980, to face burglary charges. He was convicted of felony burglary and incarcerated in the Eastern New York Correctional Facility in Napanoch, New York, from 9/3/81 until 9/23/85.

From February to April 1986, Jakobetz sold vacuum cleaners in Plattsburgh, New York. On 2/3/87, he was arrested in Plattsburgh and charged with rape and resisting arrest. These charges were later reduced to trespass due to a technicality. He also worked as a paper cutter at a printing company and as a farm tractor driver for the Wildcat Trucking Company of Saint Albans, Vermont. In this capacity,

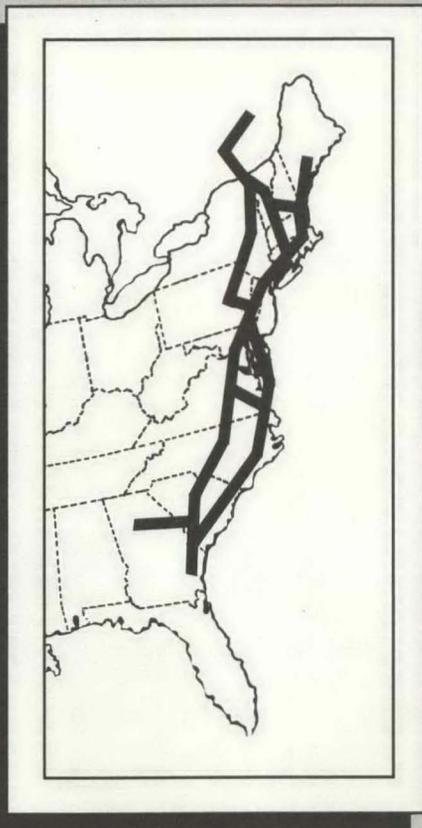
he regularly made round-trip freight runs from Quebec City, Canada, down the eastern seaboard of the United States to Georgia (see map).

**MODUS OPERANDI:**

Described below are two crimes positively connected with Jakobetz:

On 9/29/86, in Plattsburgh, New York, Jakobetz forcibly entered the apartment of a 23-year-old white female through a window. He attempted vaginal intercourse, but was unable to achieve an erection. He forced the victim at knifepoint to perform oral sex. He asked the victim if she believed he had a large penis. He left the scene by automobile, taking the victim's purse.

On 6/13/89, Jakobetz abducted a 23-year-old white female from a rest area along Interstate 91 in Vermont. As the victim exited one of the toilet stalls, he struck her in the face with his hand, wrestled her to the ground, placed paper towels in her mouth and a pillow case over her head. Jakobetz then handcuffed her hands behind her, led her to a tractor trailer rig parked nearby, and placed her



in the trailer portion. Jakobetz then took the victim's camera and purse from her vehicle. He drove the rig to New York, stopping along the way to force the victim, at knifepoint, to have vaginal, anal, and oral sex. He also asked her if she thought he had a large penis. Following the assault, Jakobetz

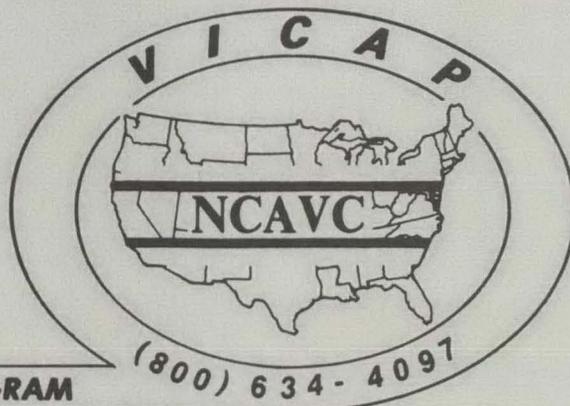
replaced the handcuffs with rope. After the 5-hour ordeal, the victim was released in the Bronx, New York City.

At the time of this last incident, Jakobetz was driving a beige International Trans-Star cab over a diesel truck with metallic brown trim. The cab had circular "Wildcat Construction Company" logos on the door and a square "Wildcat Construction Company" logo on the front of the truck over the radiator grill.

**ALERT TO CHIEFS AND SHERIFFS:**

This information should be brought to the attention of all officers working crimes against persons cases. If the MO of Jakobetz matches any unsolved crimes under your jurisdiction, contact Lt. Glen Cutting, Vermont State Patrol, 802-875-2112; Special Agents James K. Murray or John M. Hersh, FBI, Rutland, Vermont, Resident Agency, 802-773-6455; or Major Case Specialist Winston C. Norman at the National Center for the Analysis of Violent Crime (VICAP), FBI Academy, Quantico, Virginia 22135, 800-634-4097.

**LEB**



**VIOLENT CRIMINAL APPREHENSION PROGRAM**

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# *The Federal Grand Jury*

## *Exceptions to the Rule of Secrecy (Part II)*

By  
AUSTIN A. ANDERSEN



**P**art I of this article traced the development of the Federal grand jury system in the United States and set forth the reasons for the requirement that grand jury proceedings be conducted in secrecy. Two general categories of exceptions to the obligation of secrecy specifically provided for by Rule 6(e), Federal Rules of Criminal Procedure (F.R.C.P.) were noted: Disclosure without a court order, such as the disclosure to an attorney for the government and the subsequent disclosure to such government personnel necessary to assist the attorney in enforcing Federal criminal law; and disclosure requiring a court order, such as the

disclosure of Federal grand jury material to reveal a violation of State law or for use in some other judicial proceeding.

Part II will address difficulties commonly encountered by law enforcement officials attempting to comply with the requirements of Rule 6(e) as they come into contact with materials from grand jury investigations. Among the most

problematic areas are dissemination to foreign authorities, determining exactly what type of evidence constitutes "matters occurring before the grand jury," and defining the "disclosure" of such matters.

### **DISCLOSURE TO FOREIGN AUTHORITIES**

Because of the transnational character of many drug and organized crime investigations conducted by modern police agencies, there is an increasing need for reciprocal cooperation and coordination by law enforcement authorities throughout the world. Government attorneys, however,

have no discretionary authority to provide grand jury materials to other countries. In contrast to its specific provision allowing courts to reveal violations of State criminal laws, Rule 6(e) is silent with respect to an exception for the disclosure of a violation of foreign law to foreign authorities. Because the rule of secrecy generally prevents the disclosure of grand jury testimony to foreign officials, courts reject attempts by subpoenaed witnesses to invoke their fifth amendment right against compulsory self-incrimination as protection against prosecution in other countries.<sup>43</sup> This protection of the witness' testimony is especially important, inasmuch as the U.S. prosecutor has no ability to immunize the witness with respect to foreign criminal proceedings.<sup>44</sup>

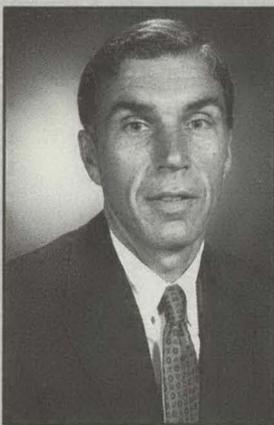
Despite the absence of express authority in Rule 6(e) to provide grand jury material to law enforcement officers of other countries, on occasion requests for disclosure by foreign agencies have been accom-

modated under Rule 6(e)(3)(C)(i),<sup>45</sup> pursuant to a court order upon a showing of a particularized need for the use of the material in a judicial proceeding.<sup>46</sup> In determining if such a need exists, the court will use a balancing test, weighing the policy of secrecy against the obligation to avoid an injustice in some other tribunal.<sup>47</sup> In addition, the court must also be satisfied that the forum for which the material is to be used qualifies as a "judicial proceeding," as opposed to a mere investigation or audit.<sup>48</sup>

Although disclosure of grand jury material under Rule 6(e)(3)(C)(i) is not easily or quickly facilitated, the U. S. Government nonetheless has a substantial interest in assisting foreign law enforcement authorities in the procurement of evidence relevant to their criminal investigations. For this reason, Congress has added a provision in the judicial section of the U. S. Code that authorizes Federal courts—rather than grand

juries—to assist foreign authorities in gathering evidence. Title 28 U.S.C. §1782 enables the U. S. district court where a person resides to order that person to provide testimony, statements, documents, or other evidence for use in a foreign or international proceeding. Application for such orders are made by letters rogatory, or requests from the foreign tribunal, using protocol set forth in Title 28 U.S.C. §1781. An order to compel evidence pursuant to letters rogatory does not, however, include grand jury material subject to the rule of secrecy.<sup>49</sup>

Other methods of exchanging information with foreign police should not be overlooked by U.S. officers investigating matters of international importance. Foreign countries may request information from the U. S. Government under treaties providing for mutual assistance in criminal investigations. Under the Mutual Assistance Treaty in Criminal Investigations with Switzerland, for instance, the U.S. Government is obligated to disclose, upon request, grand jury materials from an investigation after the case is no longer pending.<sup>50</sup> Evidence obtained without the assistance of a grand jury is often routinely exchanged with other law enforcement agencies when there is a common need for the information. Telephone records, for instance, when they are obtained by court order pursuant to Title 18 U.S.C. §2703(c) (Electronic Communications Privacy Act), are not subject to the Rule 6(e) secrecy requirement. The terms of each mutual assistance treaty determines the type of information available for exchange and



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***With its many exceptions, the doctrine of grand jury secrecy is...not an absolute.***  
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*Special Agent Andersen is a legal instructor at the FBI Academy.*

describes the form in which the request should be made.

### ISSUES CONCERNING THE APPLICATION OF GRAND JURY SECRECY

With its many exceptions, the doctrine of grand jury secrecy is obviously not an absolute. Unfortunately, neither the statutory language of Rule 6(e) nor its judicial interpretation has provided clear and unequivocal rules governing the accessibility of grand jury material to law enforcement officers under all circumstances.

#### Disclosure at the Conclusion of the Grand Jury Proceedings

Rule 6(e) is silent concerning the length of time that secrecy must be preserved. It is obvious that grand jury testimony, transcripts, and documents are not protected by the ban on disclosure to the extent they have been publicly revealed in an indictment, at trial, or in a guilty plea. Exactly how long matters not publicly disclosed must remain secret when the grand jury is no longer convened varies. The dismissal of the grand jury does not, by itself, lift the veil of secrecy, automatically providing an attorney for the government with broader discretion to disseminate grand jury material. When disclosure is made by court order pursuant to one of the rule's exceptions, however, the reasons for maintaining secrecy after the grand jury is dismissed lose some of their force and are more easily outweighed by competing interests when the court is faced with the question of whether the ends of justice require disclosure.<sup>51</sup> As previously noted, under the mutual as-

sistance treaties with some nations, disclosure may be made after the grand jury's investigation is completed.

#### Defining "Matters Occurring before the Grand Jury"

Rule 6(e) prohibits the disclosure to any person of "matters

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Testimonial  
evidence and its  
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grand jury  
material.  
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occurring before the grand jury," except when made in accordance with one of the rule's exceptions. These "matters," however, are never further defined, except by case law which is, at times, inconsistent. As a result, there is considerable confusion concerning exactly what is encompassed by the term "matters occurring before the grand jury." Courts generally agree that matters occurring before the grand jury include subpoenas, the testimony of witnesses, and specific questions of the grand jurors, as well as the transcripts of these statements, the targets upon which the grand jury's suspicion focuses, and specific details of what took place before the grand jury.<sup>52</sup> Conversely, government reports that contain

statements provided by witnesses during investigations prior to or independent of a grand jury appearance are generally not considered matters occurring before the grand jury, unless the witness was coerced into making a statement in lieu of a subpoena or appearance.<sup>53</sup> A government document that summarizes or restates matters identified as occurring before the grand jury, however, is covered by the secrecy requirements of Rule 6(e).<sup>54</sup>

Testimonial evidence and its transcription is generally considered to be grand jury material. It is arguable, however, that subpoenaed documents—especially third-party business records, such as telephone toll transactions—do not qualify as matters occurring before the grand jury.<sup>55</sup> Reasons given by courts for excluding such documents from the category of protected material include:

- Such records are independently compiled by corporations for business purposes, and by themselves, do not reveal the direction, strategy, or any other matters before the grand jury.
- They are generally sought for their intrinsic value to government investigators assisting the prosecutor and are seldom even seen by the grand jurors.
- Disclosure of such information, often obtainable by means other than with a Federal grand jury subpoena,<sup>56</sup> does not contravene the underlying policy that justifies the secrecy rule.

While holding that innocuous, pre-existing documents are not protected from disclosure merely because they are subpoenaed, one court noted that Rule 6(e) "does not require...that a veil of secrecy be drawn over all matters in the world that happen to be investigated by a grand jury."<sup>57</sup> For these reasons, most, but not all, courts hold that such documents are not defined as "matters occurring before a grand jury," unless there is a demonstrated nexus between disclosure and the revelation of some protected aspect of the grand jury's investigation, such as the identities of witnesses or jurors, the substance of testimony, the strategy or direction of the investigation, or the deliberations and questions of jurors.<sup>58</sup>

Notwithstanding the lack of judicial consensus as to whether a subpoenaed document itself falls within the definition of a matter occurring before a grand jury, one court conceptualized information *per se* that is removed from the grand jury context in the following manner:

"...when testimony or data is sought for its own sake—for its intrinsic value in the furtherance of a lawful investigation—rather than to learn what took place before the grand jury, it is not a valid defense to disclosure that the same information was revealed to a grand jury or that the same documents had been, or were presently being, examined by a grand jury."<sup>59</sup>

The Supreme Court has indicated that information *extracted* from grand jury material does not constitute a matter occurring before

a grand jury when disclosure of the raw data does not reveal that its source is the grand jury investigation. In *United States v. John Doe*,<sup>60</sup> the Court considered the issue of whether the same government attorney conducting a grand jury investigation into criminal antitrust matters may make continued use of the grand jury materials in the civil phase of the case without obtaining a court order. The Court held that there is no disclosure unless the material is actually revealed to some other person not authorized to receive it. A second issue concerned the defendant's contention that the government's use in a civil complaint of information obtained from grand jury material (including documents and transcripts of testimony) violated Rule 6(e)

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foreign law to  
foreign authorities.  
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provisions concerning secrecy by disclosing matters that occurred before a grand jury. The Court noted that since the civil complaint "does not quote from or refer to any grand jury transcripts or documents subpoenaed by the grand jury...or even

refer to the existence of a grand jury,"<sup>61</sup> it does not constitute a prohibited disclosure.<sup>62</sup>

The *John Doe* decision implies that unsourced data removed from grand jury material may be revealed by government personnel without committing a disclosure. Extracted information, however, must be scrupulously handled in order to avoid either directly or indirectly divulging a grand jury nexus. It is important to note, however, that disclosure of such material among law enforcement officers may be restricted for other reasons. The Right to Financial Privacy Act of 1978,<sup>63</sup> for instance, requires that financial records protected under the act and subpoenaed by a grand jury must be afforded the protections of Rule 6(e). In addition, the Tax Reform Act of 1976<sup>64</sup> restricts disclosures of tax information obtained from the Internal Revenue Service, whether it has been presented to a grand jury or not.

#### Defining "Disclosure"

After it is determined that certain material must be categorized as divulging matters occurring before a grand jury, disclosure of that material may be lawfully accomplished only in accordance with the exceptions to secrecy specifically set forth in Rule 6(e). Exactly what constitutes "disclosure," however, is not made clear, either by Rule 6(e) or judicial consensus. In considering the question of whether support personnel tasked with maintaining and storing grand jury material violate the secrecy rule, one court has recently indicated that mere access or posses-

sion—as opposed to *use* for investigative purposes—does not amount to disclosure as intended by Rule 6(e).<sup>65</sup> Because there is no consistent judicial guidance on this issue, government agencies are left with the uncertain task of devising appropriate security measures to protect such material.

Subpoenas, transcripts of testimony, and other documents that identify matters occurring before a grand jury entrusted to government personnel assisting the prosecuting attorney should be secured in such a way that access is limited to those individuals listed on the disclosure letter to the district court. The materials can be used only for the purpose of assisting the attorney in a Federal criminal prosecution and not for internal or administrative purposes, such as agency inspections or personnel investigations. The material should be placed in a lockable room, filing cabinet, or other container accessible only to government personnel listed on the disclosure letter; it should not be stored or identified in automated data systems—or any other location—accessible to personnel not listed on the disclosure letter. In the event that grand jury material is to be used in court, as in the case of original documents, consideration must be given to preserving the chain of custody. In most instances, however, the subpoenaed material will consist of copies of documents, thereby eliminating the need for chain of custody procedures. At the conclusion of the grand jury investigation, original documents should be returned to the owner, unless the right to the material is expressly relinquished.

## CONCLUSION

The grand jury is a time-honored legal institution that serves the interests of both the government and the accused by its ability to operate in secrecy. The exceptions to the rule of secrecy provide

be furnished to the court, and the material can be used only to assist the attorney in the Federal criminal investigation.

Depending on case-by-case factual circumstances, the definition of “matters occurring before a

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***The exceptions to the rule of secrecy provide government personnel with a carefully limited ability to access and use the work product of the grand jury's investigation.***

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government personnel with a carefully limited ability to access and use the work product of the grand jury's investigation. Most of the time, law enforcement officers come in contact with Federal grand jury material when they assist a government attorney in a Federal criminal investigation. Although the decision by the attorney to reveal matters occurring before the grand jury is discretionary, all officers receiving the material must strictly adhere to the statutory requirements of disclosure made under Rule 6(e)(3)(A)(ii). The officers must be advised of their obligation of secrecy, which not only prevents them from discussing grand jury material with unauthorized individuals but also creates a duty to provide physical security for documents that reveal matters occurring before a grand jury. Also, the name of each employee using the material must

grand jury” may not always be readily apparent; if material is not characterized as a matter occurring before a grand jury, then its disclosure is not controlled by Rule 6(e). Government personnel assisting an attorney with a grand jury investigation are likely to find themselves in possession of three types of materials:

- 1) Documents, such as subpoenas or transcripts of grand jury proceedings, that reveal matters occurring before the grand jury. These documents, clearly defined as a matter occurring before a grand jury, are entitled to the protection of secrecy and must be afforded security from disclosure absent a specific exception set forth in Rule 6(e).

- 2) Third-party business records subpoenaed by the grand jury. Because of the disagreement among courts as to

whether these documents, by themselves, reveal matters occurring before the grand jury, it is not always obvious whether they should be categorized as grand jury material. Therefore, further disclosure must be carefully coordinated with the attorney supervising the grand jury investigation.

3) Information extracted from grand jury material. Raw data removed from context and carefully evaluated to make certain that its use for other purposes neither directly nor indirectly reveals its grand jury origins is not entitled to protection under Rule 6(e).

In the absence of legislation designed to eliminate the uncertainty involved in defining grand jury material and its disclosure, these issues are likely to continue as a source of confusion for government personnel assisting grand juries. Therefore, as a general rule, the law enforcement officer in possession of any material obtained from a grand jury should seek appropriate legal guidance before attempting further dissemination of either documents or information contained therein.

**LEB**

#### Footnotes

<sup>43</sup> See, e.g., *In re Gilboe*, 699 F.2d 71 (2d Cir. 1983); *In re Baird*, 668 F.2d 432 (8th Cir. 1982), cert. denied, 456 U.S. 982.

<sup>44</sup> *Id.*, Baird at 433-434.

<sup>45</sup> Rule 6(e)(3)(C)(i), F.R.C.P., provides, in part: "Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made...when so directed by a court preliminarily to or in connection with a judicial proceeding...."

<sup>46</sup> See Note, "Disclosure of Grand Jury Materials to Foreign Authorities under Federal Rule of Criminal Procedure 6(e)," 70 Virginia Law Review 1623, 1632-3 (1984).

<sup>47</sup> *Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211 (1979).

<sup>48</sup> *Id.*

<sup>49</sup> *Supra* note 46, at 1632-1633.

<sup>50</sup> 27 U.S. Treaty at 2040; see Note, *supra* note 46, and Tigar and Doyle, "International Exchange of Information in Criminal Cases," 1983 Michigan Year Book of International Legal Studies 61, 66-73.

<sup>51</sup> See, e.g., *United States v. Short*, 671 F.2d, 178 (6th Cir. 1982), cert. denied, 102 S.Ct. 932; *Butterworth*, *supra* note 26, in which the Court implies that a State's interest in witness secrecy is not as powerful after the grand jury is dismissed; *Socony-Vacuum*, *supra* note 31.

<sup>52</sup> See, e.g., *Douglas Oil Co.*, *supra* note 47; *In re Grand Jury Investigation of Ven-Fuel*, 441 F.Supp. 1299, 1302-1303 (M.D. Fla. 1977).

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Government attorneys...have no discretionary authority to provide grand jury materials to other countries.”

<sup>53</sup> *In re Baggot*, 662 F.2d 1232, 1237-1238 (7th Cir. 1981).

<sup>54</sup> *In re Grand Jury Proceedings*, 613 F.2d 501, 505 (5th Cir. 1980).

<sup>55</sup> See, e.g., *Illinois v. Sarbaugh*, 552 F.2d 768 (7th Cir. 1977); *United States v. Interstate Dress Carriers, Inc.*, 280 F.2d 52 (2d Cir. 1960).

<sup>56</sup> Telephone records, for instance, often obtained by court order pursuant to 18 U.S.C. 2703(c) [Electronic Communications Privacy Act], are not subject to the Rule 6(e) requirement of secrecy. Since investigators have an option as to how they gain access to such material, its subsequent use or disclosure reveals nothing about the grand jury investigation.

<sup>57</sup> *Securities Exchange v. Dresser Industries*, 628 F.2d 1368, 1382-1383 (D.C. Cir. 1980), cert. denied, 449 U.S. 993.

<sup>58</sup> See, e.g., *Senate of Puerto Rico v. United States Department of Justice*, 823 F.2d 574, 584 (D.C. Cir. 1987); *In re Grand Jury Proceedings*, 851 F.2d 860, 866-867 (6th Cir.

1988); *In re Grand Jury Investigation* (New Jersey State Commission of Investigation), 630 F.2d 996, 1000 (3d Cir. 1980); *In re Special February 1975 Grand Jury*, 662 F.2d 1232, 1243 (7th Cir., 1981). Many of the majority view cases concern Freedom of Information/Privacy Act litigation in which, ironically, there is a release to the general public of subpoenaed material which, due to internal agency policy, is often not freely interchangeable among law enforcement officers.

For minority view, see *Fiumara v. Higgins*, 572 F.Supp. 1093 (D.N.H. 1983) (district court considered telephone toll records subject to secrecy); *In re Grand Jury Proceedings*, 851 F.2d 860 (6th Cir. 1988) (rebuttable presumption exists that confidential business records compelled by subpoena are matters occurring before a grand jury).

Some courts find a distinction between disclosure for law enforcement purposes and public release, noting that documents remain the property of the persons from whom they have been subpoenaed. Therefore, where the owner of the documents does not consent to their release to the public, disclosure must be authorized by court order. See, e.g., *Capitol Indemnity Corp. v. First Minnesota Construction Co.*, 405 F. Supp. 929 (D. Mass. 1975); *Interstate Dress Carriers*, *supra* note 55.

<sup>59</sup> *United States v. Interstate Dress Carriers, Inc.*, *supra* note 55.

<sup>60</sup> 481 U.S. 102, 110 (1987).

<sup>61</sup> *Id.* at 110, quoting from *In re Grand Jury Investigation*, 774 F.2d 34, 37 (2d Cir. 1985).

<sup>62</sup> This interpretation is consistent with the concurring opinion of Justice Scalia in *Butterworth v. Smith*, *supra* note 26, in which he suggests that although a State is not allowed to prevent a former witness from telling what he told the grand jury, it may be able to keep him from revealing that he gave that information to the grand jury.

<sup>63</sup> 12 U.S.C. 3420.

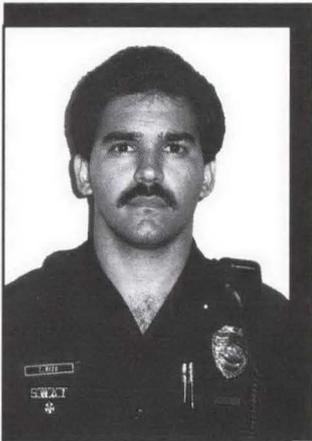
<sup>64</sup> 26 U.S.C. 6103.

<sup>65</sup> *United States v. Archer-Daniels-Midland Co.*, 785 F.2d 206, 213 (8th Cir. 1986); for a different result, see *In re Grand Jury Investigation*, 774 F.2d, 34 (2d Cir. 1985).

*Law enforcement officers of other than Federal jurisdiction who are interested in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.*

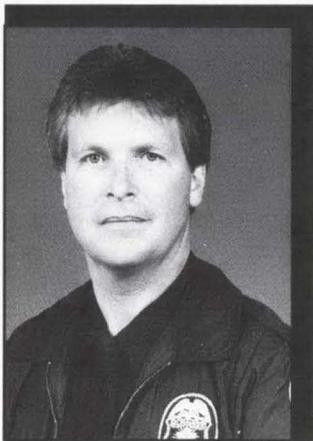
## The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize their exemplary service to the law enforcement profession.



Officer Rizo

Officer Tony Rizo of the South Miami, Florida, Police Department responded with several other officers to a call for assistance in stopping an armed abductor. When Officer Rizo arrived, the assailant, while holding a woman at gunpoint, threatened to shoot her and the officers. When the woman broke partially free, with the assailant's weapon pointed at him, Officer Rizo fired a round, fatally wounding the abductor.



Officer Johnson

Officer Jon J. Johnson of the Milwaukee, Wisconsin, Police Department volunteered to pose as the owner of a service station which, as intelligence reports indicated, would be robbed by an organized group on a specific date. When Officer Johnson, disguised as the owner, began to walk the morning deposit out of the office, he was approached by two armed suspects. They forced him to the ground at gun point and took the money bag he was carrying. While the assailants fled on foot, Officer Johnson calmly directed members of the apprehension team via radio. All members of the ring were arrested a short time later.

Officer John Ambrose and an off-duty officer, Thomas Fahy, both of the East Hanover, New Jersey, Police Department, responded to a report of a house fire. Upon arriving at the scene, the officers observed a panic-stricken woman screaming at them from an upstairs window. Both officers crawled into the smoke-filled house, where they located an unconscious victim on the stairway. They then located the woman in an upstairs room and carried both victims to safety.



Officer Ambrose



Officer Fahy

